

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

The State of Texas, et al.,

Plaintiffs,

v.

Google LLC,

Defendants.

Case No. 4:20-cv-00957-SDJ

Hon. Sean D. Jordan

Special Master: David T. Moran

**PLAINTIFF STATES' RESPONSE TO GOOGLE'S APRIL 15, 2024
OPPOSITION TO PLAINTIFFS' MOTION TO COMPEL**

The Plaintiff States submit this brief response to correct a misstatement in Defendant Google's Opposition (ECF No. 376) to Plaintiffs' Motion to Compel (ECF No. 342), that will be heard by the Special Master at tomorrow's hearing.

In Google's Opposition—regarding Judge Gilstrap's decision in *Infernal Tech., LLC v. Microsoft Corp.*, 2019 WL 5388442 (E.D. Tex. May 3, 2019)—Google argues the following:

Infernal Technology did not involve (and so Judge Gilstrap did not address) the sequencing or timing of expert disclosures in parallel cases. Judge Gilstrap issued his order during the expert discovery phase, following the disclosure of initial expert reports. *See Infernal Tech., LLC v. Microsoft Corp.*, No. 2:18-CV-00144-JRG, ECF No. 30 at 3 (setting end of fact discovery for April 22, 2019 and deadline for initial expert report disclosures for April 26, 2019).

ECF No. 376 at 4. Google, however, cites a superseded Docket Control Order in the *Infernal Technology* case that was later superseded by three amended docket control orders (ECF Nos. 52, 74, 80). By the time Judge Gilstrap issued his decision compelling the production of expert reports from a parallel case in May 2019, he had issued a Third Amended Docket Control Order. Ex. 1. Under that Order, the deadline to "Complete Fact Discovery" and to "Serve Disclosures for Expert Witnesses by the Party with the Burden of Proof" was **September 16, 2019**, not in April 2019 as

Google mis-cites. Ex. 1 at 3. Judge Gilstrap's May 2019 order compelling the production of expert reports from a parallel case, thus, came **four months before** the fact discovery and initial expert disclosure deadlines in that case.

Therefore, Google incorrectly argues that Judge Gilstrap compelled the production of expert reports only "during the expert discovery phase," as Google urges the Special Master to do here. Instead, as the States seek here, Judge Gilstrap compelled production of expert reports during the fact discovery period of that case and well in advance (four months in advance) of the initial expert disclosure deadlines in that case.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that, on April 17, 2024, this document was filed electronically in compliance with Local Rule CV-5(a) and served on all counsel who have consented to electronic service, per Local Rule CV-5(a)(3)(A).

/s/ Geraldine Young
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